

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 830

FINAL READING

Introduced by Lathrop, 12; Gay, 14.

Read first time January 10, 2008

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend  
2 section 68-901, Revised Statutes Cumulative Supplement,  
3 2006, and section 71-7611, Revised Statutes Supplement,  
4 2007, as amended by section 2, Legislative Bill 480, One  
5 Hundredth Legislature, Second Session, 2008, and section  
6 5, Legislative Bill 961, One Hundredth Legislature,  
7 Second Session, 2008; to adopt the Medicaid Prescription  
8 Drug Act; to harmonize provisions; to change provisions  
9 relating to use of the Nebraska Health Care Cash Fund;  
10 and to repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 68-901, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           68-901 Sections 68-901 to 68-949 and sections 2 to 8 of  
4 this act shall be known and may be cited as the Medical Assistance  
5 Act.

6           Sec. 2. Sections 2 to 8 of this act shall be known and  
7 may be cited as the Medicaid Prescription Drug Act.

8           Sec. 3. The purpose of the Medicaid Prescription  
9 Drug Act is to provide appropriate pharmaceutical care to  
10 medicaid recipients in a cost-effective manner by requiring the  
11 establishment of a preferred drug list and other activities as  
12 prescribed. The preferred drug list and other activities mandated  
13 by the act shall not be construed to replace, prohibit, or  
14 limit other lawful activities of the department not specifically  
15 permitted or required by the act.

16           Sec. 4. For purposes of the Medicaid Prescription Drug  
17 Act:

18           (1) Labeler means a person or entity that repackages  
19 prescription drugs for retail sale and has a labeler code from the  
20 federal Food and Drug Administration under 21 C.F.R. 207.20, as  
21 such regulation existed on January 1, 2008;

22           (2) Manufacturer means a manufacturer of prescription  
23 drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section  
24 existed on January 1, 2008, including a subsidiary or affiliate of  
25 such manufacturer;

1           (3) Multistate purchasing pool means an entity formed  
2 by an agreement between two or more states to negotiate for  
3 supplemental rebates on prescription drugs;

4           (4) Pharmacy benefit manager means a person or entity  
5 that negotiates prescription drug price and rebate arrangements  
6 with manufacturers or labelers;

7           (5) Preferred drug list means a list of prescription  
8 drugs that may be prescribed for medicaid recipients without prior  
9 authorization by the department; and

10           (6) Prescription drug has the definition found in section  
11 38-2841.

12           Sec. 5. (1) No later than July 1, 2010, the department  
13 shall establish and maintain a preferred drug list for the medical  
14 assistance program. The department shall establish a pharmaceutical  
15 and therapeutics committee to advise the department on all matters  
16 relating to the establishment and maintenance of such list.

17           (2) The pharmaceutical and therapeutics committee shall  
18 include at least fifteen but no more than twenty members. The  
19 committee shall consist of at least (a) eight physicians, (b) four  
20 pharmacists, (c) a university professor of pharmacy or a person  
21 with a doctoral degree in pharmacology, and (d) two public members.  
22 No more than twenty-five percent of the committee shall be state  
23 employees.

24           (3) The physician members of the committee, so far as  
25 practicable, shall include physicians practicing in the areas

1 of (a) family medicine, (b) internal medicine, (c) pediatrics,  
2 (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or  
3 gynecology, (g) endocrinology, and (h) oncology.

4 (4) Members of the committee shall submit conflict of  
5 interest disclosure statements to the department and shall have an  
6 ongoing duty to disclose conflicts of interest not included in the  
7 original disclosure.

8 (5) The committee shall elect a chairperson and a vice  
9 chairperson from among its members. Members of the committee shall  
10 be reimbursed for their actual and necessary expenses as provided  
11 in sections 81-1174 to 81-1177.

12 (6) The department, in consultation with the committee,  
13 shall adopt and publish policies and procedures relating to the  
14 preferred drug list, including (a) guidelines for the presentation  
15 and review of drugs for inclusion on the preferred drug list,  
16 (b) the manner and frequency of audits of the preferred drug list  
17 for appropriateness of patient care and cost effectiveness, (c)  
18 an appeals process for the resolution of disputes, and (d) such  
19 other policies and procedures as the department deems necessary and  
20 appropriate.

21 Sec. 6. (1) The department and the pharmaceutical and  
22 therapeutics committee shall consider all therapeutic classes of  
23 prescription drugs for inclusion on the preferred drug list, except  
24 that antidepressant, antipsychotic, and anticonvulsant prescription  
25 drugs shall not be subject to consideration for inclusion on the

1 preferred drug list.

2 (2) (a) The department shall include a prescription  
3 drug on the preferred drug list if the prescription drug is  
4 therapeutically equivalent to or superior to a prescription drug on  
5 the list and the net cost of the new prescription drug is equal to  
6 or less than the net cost of the listed drug, after consideration  
7 of applicable rebates or discounts negotiated by the department.

8 (b) If the department finds that two or more prescription  
9 drugs under consideration for inclusion on the preferred drug list  
10 are therapeutically equivalent, the department shall include the  
11 more cost-effective prescription drug or drugs on the preferred  
12 drug list, after consideration of applicable rebates or discounts  
13 negotiated by the department.

14 (3) The department shall maintain an updated preferred  
15 drug list in electronic format and shall make the list available to  
16 the public on the department's Internet web site.

17 Sec. 7. (1) A health care provider may prescribe a  
18 prescription drug not on the preferred drug list to a medicaid  
19 recipient if (a) the prescription drug is medically necessary,  
20 (b) (i) the provider certifies that the preferred drug has not  
21 been therapeutically effective, or with reasonable certainty is  
22 not expected to be therapeutically effective, in treating the  
23 recipient's condition or (ii) the preferred drug causes or is  
24 reasonably expected to cause adverse or harmful reactions in  
25 the recipient, and (c) the department authorizes coverage for

1 the prescription drug prior to the dispensing of the drug. The  
2 department shall respond to a prior authorization request no later  
3 than twenty-four hours after receiving such request.

4 (2) A health care provider may prescribe a prescription  
5 drug not on the preferred drug list to a medicaid recipient  
6 without prior authorization by the department if the provider  
7 certifies that (a) the recipient is achieving therapeutic success  
8 with a course of antidepressant, antipsychotic, or anticonvulsant  
9 medication or medication for human immunodeficiency virus, multiple  
10 sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b)  
11 the recipient has experienced a prior therapeutic failure with a  
12 medication.

13 Sec. 8. The department shall: (1) Enter into a multistate  
14 purchasing pool; (2) negotiate directly with manufacturers or  
15 labelers; or (3) contract with a pharmacy benefit manager for  
16 negotiated discounts or rebates for all prescription drugs under  
17 the medical assistance program in order to achieve the lowest  
18 available price for such drugs under such program.

19 Sec. 9. Section 71-7611, Revised Statutes Supplement,  
20 2007, as amended by section 2, Legislative Bill 480, One Hundredth  
21 Legislature, Second Session, 2008, and section 5, Legislative Bill  
22 961, One Hundredth Legislature, Second Session, 2008, is amended to  
23 read:

24 71-7611 (1) The Nebraska Health Care Cash Fund is  
25 created. The State Treasurer shall transfer (a) fifty-six million

1 four hundred thousand dollars no later than July 30, 2008, and  
2 (b) fifty-five million seven hundred thousand dollars annually  
3 thereafter no later than July 15 from the Nebraska Medicaid  
4 Intergovernmental Trust Fund and the Nebraska Tobacco Settlement  
5 Trust Fund to the Nebraska Health Care Cash Fund, except that  
6 such amount shall be reduced by the amount of the unobligated  
7 balance in the Nebraska Health Care Cash Fund at the time the  
8 transfer is made. On or before May 1, 2008, the State Treasurer  
9 shall transfer from the Nebraska Medicaid Intergovernmental Trust  
10 Fund and the Nebraska Tobacco Settlement Trust Fund an additional  
11 two hundred fifty thousand dollars to the Nebraska Health Care  
12 Cash Fund. The state investment officer upon consultation with  
13 the Nebraska Investment Council shall advise the State Treasurer  
14 on the amounts to be transferred from the Nebraska Medicaid  
15 Intergovernmental Trust Fund and from the Nebraska Tobacco  
16 Settlement Trust Fund under this section in order to sustain such  
17 transfers in perpetuity. The state investment officer shall report  
18 to the Legislature on or before October 1 of every even-numbered  
19 year on the sustainability of such transfers. Except as otherwise  
20 provided by law, no more than ~~fifty-five million seven hundred~~  
21 ~~thousand dollars~~ the amount specified in subdivisions (1)(a) and  
22 (b) of this subsection may be appropriated or transferred from the  
23 Nebraska Health Care Cash Fund in any fiscal year.

24 (2) Any money in the Nebraska Health Care Cash Fund  
25 available for investment shall be invested by the state investment

1 officer pursuant to the Nebraska Capital Expansion Act and the  
2 Nebraska State Funds Investment Act.

3 (3) One million dollars in the Nebraska Health Care Cash  
4 Fund is designated each year for the Autism Treatment Program  
5 Act for five fiscal years beginning in fiscal year 2007-08 and  
6 shall be distributed in each fiscal year as follows: (a) First,  
7 to the Department of Health and Human Services for costs related  
8 to application and implementation of the waiver; (b) second, to  
9 the department for other medical costs for children who would  
10 not otherwise qualify for medicaid except for the waiver; and (c)  
11 third, the balance to the Autism Treatment Program Cash Fund. The  
12 State Treasurer shall transfer the balance of the funding to the  
13 Autism Treatment Program Cash Fund based on the estimated costs  
14 of administrative and other medical costs as determined by the  
15 Legislature through the appropriation process. The transfers to  
16 the Autism Treatment Program Cash Fund in any fiscal year shall  
17 be contingent upon the receipt of private matching funds under  
18 the Autism Treatment Program Act, with no less than one dollar of  
19 private funds received for every two dollars transferred from the  
20 Nebraska Health Care Cash Fund to the Autism Treatment Program Cash  
21 Fund.

22 (4) The University of Nebraska and postsecondary  
23 educational institutions having colleges of medicine in Nebraska  
24 and their affiliated research hospitals in Nebraska, as a condition  
25 of receiving any funds appropriated or transferred from the

1 Nebraska Health Care Cash Fund, shall not discriminate against any  
2 person on the basis of sexual orientation.

3 (5) The State Treasurer shall transfer two hundred  
4 thousand dollars from the Nebraska Health Care Cash Fund to the  
5 University of Nebraska Medical Center Cash Fund for the Nebraska  
6 Regional Poison Center within fifteen days after each July 1.

7 Sec. 10. Original section 68-901, Revised Statutes  
8 Cumulative Supplement, 2006, and section 71-7611, Revised Statutes  
9 Supplement, 2007, as amended by section 2, Legislative Bill 480,  
10 One Hundredth Legislature, Second Session, 2008, and section 5,  
11 Legislative Bill 961, One Hundredth Legislature, Second Session,  
12 2008, are repealed.